MINUTES OF MEETING OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street Auditorium and Conference Room 308 Phoenix, Arizona 85007 Thursday, November 30, 2017 – 1:00 p.m.

Present:

Dale L. Schultz

Chairman

Joseph M. Hennelly, Jr.

Vice Chair Commissioner

Scott P. LeMarr Robin S. Orchard

Commissioner

Steven J. Krenzel

Commissioner (telephonic)

James Ashley

Director

Jason M. Porter

Chief Legal Counsel

Trevor Laky

Legislative Affairs Chief / Public Information Officer

Jacqueline Kurth Renee Englen Medical Resource Office Medical Resource Office

William Warren

ADOSH Director

Phillip Murphy

Assistant ADOSH Director

Brian Downen

Compliance Officer

Kara Dimas Commission Secretary

Chairman Schultz convened the meeting at 1:00 p.m. Also i

Chairman Schultz convened the meeting at 1:00 p.m. Also in attendance were Mitchel Lipton, M.D., with Hand Center P.C.; Brian Clymer; Ron Hartman; Joyce Capinjoca and Monique Carbary with Corvel Corporation; Francis Johnson with Optum; Franklin R. Marino with Phoenix Law Enforcement Association; Steve Weiss, representing himself and Arizona Association of Lawyers for Injured Workers ("AALIW"); Ken Eichler with ODG by MCG Health; Debbie Luera and Chris Garland with Integrion Group; Debra Runbeck, Art Gage, and Terry Fox representing AALIW; Tom Whitley; Mark Kendall, Tammy McCoy, and Becky Stingle with CopperPoint Insurance; Sue Schweppe with BBSI; Selma Cossto with El Super; Cathy Vines; Mike Murry with Environmental Stoneworks; Ken Crane with Phoenix Law Enforcement Association and Arizona Police Association; David Parker; Cheryl Roberts with Arizona Department of Administration Risk Management; Seema Lord with Freeport-McMoran; Chris Hansen with the City of Tempe; Weston Montrose; Marc Osborn with Property Casualty Insurers Association; Susan Strickler, Russell Smoldon and Emily Rice with Arizona Self Insurers Association; Debbie Baker with Valley Schools; Pat Krek with Arizona Department of Administration; and Brian Moore with United Phoenix Firefighters Association.

Public Hearing Under Arizona Administrative Code R20-5-1301(C) Regarding Expanding Applicability of the Official Disability Guidelines.

Chairman Schultz discussed the background, purpose of, and process for the Public Hearing under R20-5-1301(C). He welcomed public comment, noting that written comments could be submitted through the close of business.

Mitchel Lipton, M.D.; Brian Clymer; David Parker; Ken Crane; Brian Moore; Steve Weiss; Art Gage; Tammy McCoy; Weston Montrose; Debra Runbeck; Marc Osborn; Russell Smoldon; Chris Garland; Debbie Baker; and Ken Eichler addressed the Commission. A written transcript of the Public Hearing is attached hereto.

Chairman Schultz recessed the meeting at 2:34 p.m. The meeting reconvened at 2:45 p.m. in Conference Room 308. Also present were Charles Keller representing America Roofing; Raymond Byrne and James Lechuga Jr. with America Roofing; Michael Murray with Environmental Stoneworks; Ken Eichler with ODG by MCG Health; and Jessica Aceves with Snell & Wilmer.

Approval of Minutes of November 16, 2017 Regular Meeting Minutes and November 16, 2017 Executive Session Minutes.

Commissioner LeMarr moved to approve the Minutes of the November 16, 2017 regular session meeting and Vice Chair Hennelly seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Commissioner Orchard moved to approve the Minutes of the November 16, 2017 executive session meeting and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Consent Agenda:

All items following under this agenda item are consent matters and will be considered by a single motion with no discussion unless a Commissioner asks to remove an item on the consent agenda to be discussed and voted on separately. The Commission may move into Executive Session under A.R.S. § 38-431.03(A)(2) to discuss records exempt by law from public inspection. Legal action involving a final vote or decision shall not be taken in Executive Session. If such action is required, then it will be taken in General Session.

a. Approval of Proposed Civil Penalties Against Uninsured Employers.

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2.	2C17/18-0205	C.D.I. Express LLC
3.	2C17/18-0304	Cheetahs Movers LLC
4.	2C17/18-0199	Red Hot Roofing, Inc.

Big Red Barn LLC

5. 2C17/18-0201 The Park Street Food Bar dba Yardstick Management, LLC

6. 2C17/18-0244 USW/CAT Construction & Restoration Experts Catastrophe Team Inc.

7. 2C17/18-0303 Yarda Castellanos USA, LLC

Commissioner LeMarr moved to approve the Consent Agenda and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and Action of Arizona Division of Occupational Safety and Health Proposed Citations and Penalties.

Chairman Schultz discussed the purpose of and process for the Commission's consideration of ADOSH citations and proposed penalties.

Professional 24HR Road Service LLC 2101 S. 12th Ave.

1. 2C17/18-0299

Fatality/Accident

Years in Business:

8

Tucson, AZ 85713

Site Location: 2450 N. Jackrabbit Ave.

Tucson, AZ 85743

Inspection No:

N7988-1255960

Inspection Date:

08/08/2017

Mr. Warren summarized ADOSH's fatality investigation and reviewed the file. He noted that ADOSH was not recommending any citations.

Chairman Schultz and Mr. Warren discussed the frayed electrical cord discovered near the injured worker's body.

The Commission took no action.

America Roofing LLC

1005 S 30TH Ave

Phoenix, AZ 85009

Site Location:

4950 W. Chandler Blvd

Chandler, AZ 85226

Inspection No:

H9685-1256188

Inspection Date:

08/14/2017

REPEAT SERIOUS - Citation 1 - Item 1 - 4950 W. Chandler Blvd., Chandler, AZ 85226: Four employees engaged in moving and storing rolls of roof underlayment from the north side of the roof to the south side of the roof were not protected from falling approximately 22 feet to the ground below by the use of conventional fall protection or the combination of other fall protection systems required by the standard. (29 CFR 1926.501(b)(10)).

America Roofing LLC was previously cited for a violation of this occupational safety and health standard 1926.501(b)(10), which was contained in ADOSH inspection number 1102438, citation number 1, item number 1 and was affirmed as a final order on January 26, 2017, with respect to a workplace located at 18413 W. Roma Ave, Goodyear, AZ 85395.

Div. Proposal - \$4,000.00

Formula Amt. - \$4,000.00

Empl. Covered by inspection:

1

18

6

TOTAL PENALTY -\$4,000.00 TOTAL FORMULA AMT. - \$4,000.00

Referral

Years in Business:

Empl. Covered by inspection:

Mr. Warren noted that the Commission had previously remanded this file to ADOSH for further review. He summarized the citation and proposed penalty and addressed questions the Commissioners had previously raised concerning employer knowledge.

Mr. Downen discussed the inspection and explained how he identified Mr. Lechuga's role with America Roofing. Mr. Warren discussed the types of roles that can impute knowledge to an employer. He reviewed Mr. Lechuga's interview transcript, concluding that Mr. Lechuga's answers established employer knowledge.

Commissioner LeMarr and Chairman Schultz discussed an OSHA letter of interpretation concerning vendors that deliver roofing materials.

Commissioner Orchard, Mr. Warren, and Mr. Downen discussed the number or photographs taken during the inspection, including a photograph depicting an employee wearing fall protection equipment.

Commissioner Orchard and Mr. Warren discussed the distinction between "not using any form of fall protection" and "insufficient fall protection." Commissioner Orchard asked Mr. Warren to look into whether it was necessary to use the former terminology in cases where an employer has provided fall protection equipment.

Commissioner LeMarr, Mr. Warren, and Mr. Downen discussed Bill Cooper's involvement in the opening conference, his absence during Mr. Lechuga's interview, and whether Mr. Downen had asked Mr. Cooper who was in charge at the worksite.

Mr. Keller discussed ADOSH matters involving America Roofing since 2012 and the detrimental impact of having pending investigations listed on OSHA's website. He discussed the questioning of Mr. Lechuga, noting his belief that the questioning was contrary to what members of the Chairman's Roofing Alliance had been told. He indicated that, to the extent Mr. Lechuga is a member of management, he had a right to have a company representative present during the interview. He also noted that Mr. Lechuga had not received a copy of the interview transcript. He stated that Mr. Lechuga disagreed that he was a supervisor of America Roofing and stated his disagreement with ADOSH's interpretation of the OSHA letter of interpretation, arguing that it is applicable to the circumstances of the inspection.

Commissioner LeMarr and Mr. Byrne discussed the concept of "self-performing" vendor tasks. Commissioner LeMarr noted that the inspection photographs depicted three employees without tool belts carrying roofing material.

Mr. Warren discussed the OSHA letter of interpretation, the OIS system and file opening process, the interview process and the Chairman's Roofing Alliance; and the interview transcript.

Chairman Schultz, Mr. Downen, and Mr. Byrne discussed the photographs; which employees were tied off; and the number of employees on the roof.

Commissioner Orchard moved to go into Executive Session and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

The Commission went into Executive Session at 3:27 pm.

The Commission returned to regular session at 3:48 p.m.

Commissioner Orchard, Mr. Warren, and Mr. Downen discussed whether it is possible for a supervisor to reasonably assume that employees wearing fall protection equipment were properly tied off.

Vice Chair Hennelly moved to approve the proposed penalty as presented and Commissioner Krenzel seconded the motion. Chairman Schultz, Vice Chair Hennelly, and Commissioner Krenzel voted in favor of the motion. Commissioner LeMarr and Commissioner Orchard voted against. The motion passed.

Mr. Ashley left the meeting for a previously scheduled stakeholder meeting.

Bodega Latina Corporation dba El Super

3372 S. 6th Avenue

Tucson, AZ 85713

Site Location:

3372 S. 6th Avenue

Tucson, AZ 85713

Inspection No:

T3633-1265554

Inspection Date:

09/22/2017

<u>SERIOUS</u> – Citation 1 - Item 1 – (a) Meat cooler: Employees worked on top of the meat cooler, which was nine feet above the floor, when they were stocking and removing supplies including gloves and meat trays, and the platform was not guarded by a standard railing. (29 CFR 1910.23(c)(1)).

Div. Proposal - \$5,000.00

Formula Amt. - \$5,000.00

TOTAL PENALTY -

\$5,000.00

TOTAL FORMULA AMT. - \$5,000.00

Referral

Years in Business:

Empl. Covered by inspection:

Mr. Warren summarized the citation and proposed penalty, and reviewed the photographs.

Vice Chair Hennelly, Commissioner LeMarr, and Mr. Warren discussed Photograph # 1, abatement, and where the employee landed after falling.

Commissioner LeMarr, Commissioner Krenzel, and Mr. Warren discussed where the employee was standing and where he fell from.

Commissioner Orchard moved to approve the citation and proposed penalty as presented and Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Environmental Stoneworks, LLC

7240 W Allison Rd., #5085

Site Location:

Unprogrammed Related

Empl. Covered by inspection:

Years in Business:

39 3

5

Chandler, AZ 85226

320 E. Warner Rd.

Gilbert, AZ 85296

Inspection No:

H9685-1256083

Inspection Date:

08/11/2017

<u>SERIOUS</u> – Citation 1 - Item 1 - a) Avila Gilbert Town Square: Three employees who worked with and were exposed to corrosive Amerimix Preblended Mortar and Sakrete Mortar were not provided suitable facilities for quick flushing of the eyes within the work area for immediate emergency use. (29 CFR 1926.50(g)).

Div. Proposal - \$2,250.00

Formula Amt. - \$2,250.00

<u>SERIOUS</u> – Citation 1 - Item 2 – b) Avila Gilbert Town Square: One employee who was required to wear a 3M brand N95 particulate respirator, model 8210, while mixing Amerimix and Sakrete mortar was not fit tested prior to initial use of the respirator. (29 CFR 1910.134(f)(2)).

Div. Proposal - \$1,800.00

Formula Amt. - \$1,800.00

TOTAL PENALTY - \$4,050.00

TOTAL FORMULA AMT. - \$4,050.00

Mr. Warren summarized the citation and proposed penalties, and reviewed the photographs.

Commissioner LeMarr discussed the N95 respirator. Mr. Warren noted that the Consultation Section is working with groups on the issue of proper use of the N95 respirator.

Mr. Murray discussed silica exposure testing and indicated that tested employees were above applicable exposure levels. He discussed his background and commitment to safety. He discussed the employer's growing safety program and efforts to develop a strong safety culture.

Chairman Schultz noted his appreciation for the employer's quick abatement and positive safety culture.

Citing good faith and quick abatement, Commissioner Orchard moved to reduce the proposed penalties as follows: (1) reduce the proposed penalty for Citation 1, Item 1 from \$2,250.00 to \$1,800.00; and (2) reduce the proposed penalty for Citation 1, Item 2 from \$1,800.00 to \$1,440.00; for a total proposed penalty of \$3,240.00. Commissioner LeMarr seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion. The motion passed.

Discussion and/or action regarding Industrial Commission goals, objectives and key initiatives for 2017. This Agenda Item may include discussion regarding the Commission budget and review of Division, Department, and Section specific objectives.

In Mr. Ashley's absence, there was no discussion concerning this agenda item.

Announcements, Scheduling of Future Meetings and Retirement Resolutions.

Ms. Dimas confirmed Commission meeting dates through December 2017. The Commissioners agreed to cancel the December 7, 2017 meeting.

Ms. Dimas discussed the Administrative Division's Christmas Potluck.

Public Comment.

There was no public comment.

Commissioner LeMarr moved to adjourn and Commissioner Orchard seconded the motion. Chairman Schultz, Vice Chair Hennelly, Commissioner LeMarr, Commissioner Orchard, and Commissioner Krenzel voted in favor of the motion and the meeting was adjourned at 4:08 p.m.

THE INDUSTRIAL COMMISSION OF ARIZONA

By

James Ashley Director

ATTEST:

Kara Dimas, Commission Secretary